The Concept of *Maqāsid al-Shari'ah*

Dr. Mosa Alblezi
Lecturer in Islamic Studies, The Muslim College, London, England
E-mail: mosa@muslimcollege.ac.uk

ISSN (P):2708-6577
ISSN (E):2709-6157

Abstract

Reading Islam, from a Sharīʿah (law) perspective, reveals a direct correlation between human interest and objectives of the Sharīʿah (Islamic law) stipulated by Allah (sw). The objective of Islamic law, comprehensively takes into consideration the worldly existence of man as well as the afterlife, both of which are interrelated, to achieve success in both worlds. Therefore, the main objectives of Islamic law are to protect human lives, their intellect, wealth, religion, progeny and dignity and provide all the necessary principles to govern themselves by a justice system, laid out by Divine revelation. On the other hand, ignoring the pursuit of such objectives renders the practice of Islamic law as ineffective. The early Islamic scholars endorsed the examination of the Islamic rules and its principles (Fiqh & Usūl al- Fiqh), with little emphasis on Sharīʿah. As a result of which, they neither explicitly elaborated nor presented the science in their works. Modernity was a turning point in Islamic science, the Muslim intellectuals (ʿUlāmā) adopted various approaches to develop the Islamic legal system attempting to comprehend the performance of the Qur'an and the tradition of the Prophet Muhammad (pbuh) in the context of new challenges, which resulted in exploring the overall understanding of the objectives of the entire Sharīʿah and its rules.This paper's research methodology entails presenting a review of the contemporary literature on the pioneers of the theory of Maqāṣid al-shari'ah and to suggest a few research directions for future developments. The paper will employ a historical and content analysis method to achieve its objective. The expected outcome of the paper is that it will serve as a base for future studies in Islamic jurisprudence.

Keywords: *Usul-al-fiqh*, Objectives of Islamic law, *Maqāsid al-Shari'ah,* Islamic Law, Contemporary Ijtihad

Introduction

The Theory of *Maqāsid* al-S*hari'ah*

The *maqāsid* (sing. *maqsad*) are the higher objectives, intentions, principles, purposes, wisdom and reasoning behind the rulings of the *Shari'ah* – in other words, the term *maqāsid* answers the reason behind the law. Although the systematic theory of *Maqāsid al-Shari'ah* (the purpose of the law) within the corpus of the *Shari'ah* was developed relatively late, in the eighth century after the *hijrah*, the earlier scholars would nonetheless have understood the *maqāsid* of the *Shari'ah*. Thus, in the Qur'an there is found the *maqsad* of creation as "*I created the jinn and humankind only that they may worship Me*"[1] the *maqsad* of sending the messengers as "*Not a messenger did I send before thee without this inspiration sent by Us to him: that there is no god but Me; therefore worship and serve Me*"[2] and the *maqsad* of the Qur'an as the Guide, the Truth, a Warning and Healing.[3]

---

[1] (Al Qur'ān:51:56)
[2] (Q 21:25)
[3] (Q 2:2, 14:1, 16:89, 39:41, 17:82)

Ibn al Qayyim (d.751AH/1350CE) eloquently defined the *maqāsid* of the *Shari'ah* as follows:

"*Shari'ah* is based on wisdom and achieving people's welfare in this life and the afterlife. *Shari'ah* is all about justice, mercy, wisdom, and good. Thus any ruling that replaces justice with injustice, mercy with its opposite, [the] common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the *Shari'ah*, even if it [is] claimed to be so according to some interpretation"[4]

There is unanimous agreement among scholars that the purpose of the *Shari'ah* is for the benefit of human beings, in their life in this world and the hereafter. The theory of identifying the *maqsad* of a ruling of the *Shari'ah*, derived from the Qur'an and *Sunnah* (tradition and sayings of Prophet Muhammad (saw) is that it will define the wisdom behind the ruling. Much of the *Shari'ah* after the death of the Prophet (saw) was developed in response to new questions, unusual situations and circumstances, changing times and society, with the Qur'an and the *Sunna* as the fundamental texts. Other agreed primary methodologies are: *qiyas* – analogy and *Ijma* – consensus, both accepted by Islamic jurists as primary sources in deducing new rulings. Further theories and methodologies developed by jurists, perhaps less agreed upon but considered secondary sources nonetheless, are: *istihsan* (juristic preference), *istishab* (legal presumption of continuation), *urf* (custom), *istislah* or *maṣlaḥa* (public interest), *sadd al-dhrari'* (blocking the lawful means to an unlawful end), all of which are used when the primary sources are silent.

There are three other terminologies used by *usuli* scholars that have similar meanings and are understood as *maqāsid*: *ḥikmah* (wisdom), '*illah* (effective cause) and *maṣlaḥa* (pl. *masāliḥ*, benefit). *Ḥikmah* signifies: the purpose of the Lawgiver, the beneficial aim of a particular ruling or even the beneficial significance of the whole of the *Shari'ah*. '*Illah* has two meanings: cause and effect; and the effective cause of the ruling. Both *hikmah* and '*illah* can be used synonymously with *maqāsid*, but perhaps the term that was used interchangeably by the early *usuli* scholars is *maṣlaḥa*. Kamali argues that although the *masāliḥ* and *maqāsid* have 'parallel values', "… equating these two concepts partly accounts for the marginalisation of the *maqāsid* in mainstream *usul al-fiqh*". [5]

Discussion

Maqasid Al-Shar'iah as Rooted in the Qur'an and Sunnah

Even without knowing the theory of the *maqāsid* of the *Shari'ah*, a Muslim instinctively knows that the *Shari'ah* has a purpose, though what the purpose is may not always be understood. It can be argued that Muslims' general understanding is that the purposes of the *Shari'ah* are for the benefit of humankind in this life and the afterlife. It is thus surprising that the concept of the *maqāsid*, although evidently important, is yet a somewhat neglected subject. During the time of the Prophet (saw), the time of the *Ṣaḥāba* (Companions of the Prophet) and the *Tabi'un* (the followers) the *maqāsid* would have been understood from the Qur'an and the *Sunnah*. Whilst, the scholars after the Prophet's demise used various terms such as *maṣlaḥa* (public interest), *illah* (cause), *ḥikma* (wisdom) to imply the *maqāsid*. However, it can be reasoned that for the Muslim

[4] Auda, J. (2008), MAQĀSID AL-SHARĪʿAH – An Introductory Guide, IIIT, http://www.jasserauda.net/new/pdf/maqāsid_guide-Feb_2008.pdf (Accessed march 2020).

[5] Kamali, M.H., (2008), Maqāsid Al-Shari'ah Made Simple, The International Institute of Islamic Thought, p.145)

community to develop higher God-consciousness (*taqwa)* in the practice of the *Shari'ah*, with the passage of time, they would need to have a good understanding of the *maqāsid.*

The *Maqāsid* in the Qur'an

The Qur'an as the principle source for the *Shari'ah* has defined its *maqāsid* as follows: "*(O mankind! There has come to you good advice from your Lord, and a cure for that which is in your breasts and a guidance and a mercy for the believers.)*".[6] The theme of a 'Guide' and a 'Mercy' can be discerned throughout in reading the Qur'an. Not all the commands in the Qur'an explain the concept of the *maqāsid* but very often the Qur'an does extol, express, and advance the principles of 'justice', 'understanding' or 'reflection' and 'moderation'. In the Islamic tradition 'Justice' is a manifestation of God's Mercy and can be considered a purpose (*maqsad)* in its own right. Another universal *maqsad* worth mentioning here is the concept of 'ease'. Notably, the Qur'an states: "*Allah intends for you ease, and He does not want to make things difficult for you.*".[7] Although the *maqāsid* mentioned in the verses above are general and universal, a specific *maqāsid* found along with certain commands elsewhere. For example, God says that the ablution for prayer is not to "*…O you who believe! When you stand (intend) to offer the Salah (the prayer), then wash your faces and your hands (forearms) up to the elbows, rub (by passing wet hands over) your heads, and (wash) your feet up to the ankles. If you are in a state of Janaba, purify yourselves (bathe your whole body). But if you are ill or on a journey or any of you comes from the Gha'it (toilet) or you have touched women and you find no water, then perform Tayammum with clean earth and rub therewith your faces and hands. Allah does not want to place you in difficulty, but He wants to purify you and to complete His Favor to you that you may be thankful".*[8] Moreover, the *Maqāsid* of formal prayer we are told is to "…*and perform the Salah. Verily, the Salah prevents from Al-Fahsha' and Al-Munkar and the remembrance of Allah is greater indeed …*"[9]

The meaning of this is that the Qur'an contains all that would be needed to derive a ruling for all times and all eventualities even though that ruling may not be explicitly stated. Jasser Auda asserts that if one reads the Qur'an in relation to themes, purposes, and values, as a 'unified whole', the "… verses of the rulings' (*ayāt al-aḥkām*) will extend from a few hundred verses to the entire text of the Qur'an".[10]

Understanding the *Maqāsid* from the *Sunnah*

The Qur'an defines the purpose (*Maqāsid)* of sending Prophet Muhammad (saw) as: "*…. And we have sent you not but as a mercy for the 'Alamīn"*.[11] For a Muslim the Prophet (saw) is the central figure, a 'role model' in every aspect of life. One may understand from this that the *Sunnah* is the second primary source of the *Shari'ah*. The *Sunnah* primarily serves as an explanation, an interpretation and even supplements the Qur'an. The Qur'an often repeats the command "*O you who believe! Obey Allah and obey the Messenger*" equating it with obedience to Allah (swt).[12] It may be asked how a Muslim should 'obey the Messenger of God'. In clarifying which of the *Sunnah* is legislative and which is not, Ibn Ashur asserts the need to identify the capacity in which

---

[6] (Q 10:57)
[7] (Q 2:185)
[8] (Q 5:7)
[9] (Q 29:45)
[10] Auda p.40.
[11] (Q 21.107)
[12] (Q 3:59)

the Prophet (saw) acted, in his chapter entitled 'The Prophet's Intent of Legislation'. Ibn Ashur gives concrete examples of statements and practices of the Prophet to elucidate the Prophet's (saw) intention when speaking or acting in each of the above-mentioned capacities. In the examples given, one can clearly see the difference between the Prophet's legislation and advice and similarly, between obligations and higher codes of morality and behaviour. When the Prophet (saw) for example says 'learn your ritual from me', according to Muslim scholars this is a command. When the Prophet (saw) was asked questions regarding a particular course of action, often a *fatwa* (legal ruling) was issued. Interestingly, when the Prophet (saw) was asked to intercede with Bahira on behalf of her husband for her to return to her husband; Bahira, after understanding from the Prophet that it was not a command, refused to return. In another case the Prophet (saw) was asked by Jabir to intercede with the creditors of his deceased father, but the creditors refused to waive the debt. In both these cases, the parties approached by the Prophet (saw) understood that this was not a command but a request, highlighting here the role of the Prophet as a conciliator.[13]

Historical Development

The historical development of the theory of *Maqāsid al-Shari'ah* can be categorised into three stages: the first, the era of the companion of the Prophet (pbuh). It was the earliest period traced back, whereby significant awareness of the objectives of the Sharīʿah with regards to understanding and implementing the law, from the Qur'an and Hadith primarily came to light. The second period is the *Usūliyūn* era and this period lasted up to the fourth century of the Islamic Hijiri calendar. The third and the latest stage was the era for the formulation of the objectives of the Sharīʿah as an independent field of speciality, this was possible only, by the completion of the development of Usul al-Fiqh. The representatives of earlier era were the companions especially the second caliph Umar bin Khattab, exercised certain Sharīʿah applications, while in medieval period includes, scholars such Al-Qaffal Al-Kabīr, Izz Abdal-Salam, Imam Al-Juwayni, Ghazali, Shatibiand and Ibn Taymiyyah. The prominent contemporary scholars for the modern period are led by the great revivalist scholars Ibn Ashūr and Ahmed Al-Raysūni amongst others.

The companions of the Prophet (Sahābah) and their disciples (Tābiʿyūn) were vigorous in their approach to comprehend the meaning of the Qur'an and to implement the acts of the Prophet Muhammad (pbuh) as well as to uncover the potential content and the objectives of his action. Imam al-Shatibi admired the companion's recognition of the purpose and the objectives behind the divine texts. In addition, he affirmed the role of the companion and quoted the following:

"They understood the objectives of the Shari'ah and they hit its target and they established its foundation and completed it and their intellects reflected the verses of the Qur'an where they worked out well to attain its target".

Definition of the Theory of Maqāsid al-Shari'ah

The formulation, debates and discussions on the *maqāsid* theory and in fact all the theories within the corpus of the *Shari'ah* should take place in the spirit of the following *hadith* of the Prophet (saw) depicting his conversation with Mu'adh ibn Jabal. When Mu'adh was embarking on a mission and was asked by the Prophet how he would judge a situation, his response that he would make *ijtihād* (personal reasoning), to arrive at his own judgement, if he did not find the answer in the Qur'an or the tradition of the Prophet,

[13] Auda, p.43

met with the Prophet's approval.[14] In encouraging *ijtihād* to derive a ruling the Prophet (saw) said: "When a judge makes *ijtihād* and reaches a correct conclusion, he receives a double reward; and if his conclusion is incorrect, he still receives a single reward".[15] In volume three of the *Muwafaqat*, Imam al-Shatibi argues that *ijtihād* has two pillars: the first pillar being a complete knowledge of the grammar and syntax of the Arabic language and the second pillar, knowledge of the *maqāsid*.[16] Therefore unless one performs *ijtihād* with an understanding of the intention of the Lawgiver (*maqsad*), supported by expert knowledge of Arabic language as a means to understanding the context and the nuances of the intention of the Lawgiver, the *ijtihād* will be deficient. Contemporary scholars such as Ibn Ashur, A. Raysuni, F. Rahman, M. Kamali, J. Auda and T. Al-Alwani amongst others all call for the revival of the traditional *usūl al-fiqh*, based on the tenets laid down by Imam al-Shatibi; namely, that of the *maqāsid* as the 'bases for ruling'.[17]

Identifying the *Maqāsid*

As mentioned earlier, the Qur'an expresses and the *Sunnah* expounds and interprets the *maqāsid* of the *Shari'ah* in numerous places and in a variety of contexts, but the term *maqāsid* has not been employed in either of these sources. However, it can be argued that both these sources are *maqāsid* oriented. One can discern from the Qur'an and the *Sunnah* that the revealed *Shari'ah* is for the benefit of humankind, individually and collectively, in this world and the next, as a 'mercy' from God. It is important to identify and understand the universal *maqāsid* from the Qur'an and the *Sunnah* as a 'whole', together with the specific *maqsad*. Otherwise the specific *maqsad* can in some instances seem to be in conflict with the universal *maqāsid*. For example, during the time of 'Umar ibn al-Khattab (d.73AH/693CE) as the second *Caliph*, lifted the punishment for theft of amputation of the hand,[18] based on the famine at that time.[19] Knowing the 'particular' and the 'universal' *maqāsid* ensures a proper understanding of the *Shari'ah*. According to Imam al-Shatibi the "…rules for all acts vary in accordance with the universal and the particular without any correspondence between the rules".[20] An understanding of the correlation of universal *maqāsid* with the specific *maqsad* will allow the legislator to decide which one to adopt and which the jurist should let go, in the inclusive 'whole' of the *Shari'ah*. In situations such as these, the jurist would have to decide from the 'whole' of the texts what the best possible outcome is and the importance of the above example, as well as other examples from the period of the Companions, of suspending the command of God in certain circumstances, is that it illustrates the need to understand of all the *maqāsid* as a 'whole', in determining the outcome of a particular case or situation.

---

[14] Al 'Alwani, T. J., (1990), Usul Al Fiqh Al Islami: Source Methodology in Islamic Jurisprudence, trans. Y. T. DeLorenzo & A. S. Al-shaikh-Ali: Maryland, U.S.A: The International Institute of Islamic thought, p13.

[15] A-Alwani, 1990, p. 14

[16] Rifa'I, S.L.M (2004), The Legal Doctrines of Maqāsid AL-Shari'ah with particular reference to the works of Imam al-Shatibi: Historical and Practical Dimension, Thesis Submitted to the School of Oriental and African Studies, University of London, p.42

[17] Rifa'i, 2004, p. 45

[18] (Q 5:38)

[19] Izzi Dien, M., (2004), Islamic Law – From Historical Foundations to Contemporary Practice, Trowbridge, England: University of Notre Dame Press, p.6

[20] Al-Shatibi, I. Ibn M.A.I., (2011), The Reconciliation of the Fundamentals of Islamic Law, Vol.1, Trans. I.A.K. Nyazee, Lebanon: Garnet Publishing Limited, p. 95

Imam al-Shatibi argues that one of the tools needed for the proper identification of the *maqāsid* in the texts is mastery of the Arabic language, its grammatical rules and linguistic meanings.[21] The Qur'an states: "*Thus have I revealed it to be a judgement of authority in Arabic*".[22] The Qur'an often uses metaphors; hence the knowledge of Arabic syntax is crucial in textual analysis, without which the *maqāsid* of the *Shari'ah* cannot be comprehensively understood. In addition, knowledge of the context and occasion of revelation is also crucial in identifying the *maqsad*. For example, in the Qur'an God urges the Muslims to: "… *make ready your strength to the utmost of your power, including steeds of war* …".[23]

Scholars asserting the theory of the *maqāsid* argue for the Qur'an and the *Sunnah* to be seen as an integral 'whole' legal document. The importance of this can be discerned from the fact that a subject is mentioned in more than one place and context in the Qur'an and the *Sunnah*. By identifying all the relevant verses in the Qur'an and the *hadiths* of the Prophet (saw), the jurist will have a better command of the knowledge required for understanding the *maqāsid*. Imran Nyazee in his book 'Islamic Jurisprudence' discusses *maqāsid* and *maṣlaḥa* before explaining the other rational sources arguing that: "Each rational source is today considered part of the larger doctrine of *maṣlaḥa* [as well as *maqāsid*] … this principle is considered the most important and the most comprehensive instrument of *ijtihād* for modern times …"[24].

The Agreed 'Dimensions' in the Theory of *Maqāsid* al-S*hari'ah*

Based on the importance of the *maqāsid* or *maṣlaḥa*, the scholars have classified them into three dimensions/levels of descending importance: theDarūrīyāt *(*essentials*)*, followed by the *hajiyyat (*needs*)* and the *tahsiniyyat (*complementary*)*. These three dimensions are not drawn from individual textual evidence but are identified from the 'whole' body of text, the Qur'an and the *Sunnah*, using the inductive methodology, a collective and total textual examination (*istiqra*). For example, in the command to 'establish regular prayer', the question of 'how' can only be understood from using the inductive methodology from the 'whole' of the texts. As Imam al-Shatibi says:

"The evidence that [is] under consideration here, however, [is] based on induction by enumeration through the entire corpus of probable evidence [proofs] that converges on a single meaning to yield a definitive meaning. There is power in the collective that is not to be found in separation".[25]

In identifying all the relevant texts in relation to particular subject matters, with understanding of the 'universal' principles, using the inductive methodology, the scholars divided all the *masāliḥ* into three dimensions of the *maqāsid* of the *Shari'ah*. The three dimensions of the *maqāsid* of the *Shari'ah* and what constitutes them has been arrived at by human endeavour through *ijtihād*. Discussions and debates on previous writings on the *maqāsid* of the *Shari'ah* continue with later scholars arguing for additions and priorities, also through *ijtihād*.[26]

The Essential (*Darūrīyāt)* Dimension of *Maqāsid* al-S*hari'ah*

[21] Rifa'i, 2004, p. 61
[22] (Q. 13:37)
[23] (Q. 8:60)
[24] Nyazee, I.A.K., (2003), Islamic Jurisprudence, Malaysia: The International Institute of Islamic Thought, p. 195
[25] Al-Shatibi, p. 5
[26] Al-Shatibi, p. 8

The Darūrīyāt dimension is seen as the absolute requirements not only to survive but for the spiritual well-being of the human being and the larger community, in this life and the next, the destruction of which would create chaos and the collapse of order. Traditional scholars, including Imam al-Shatibi have identified the Darūrīyāt as the 'protection' and 'preservation' of religion, life, intellect, progeny and wealth.

The protection of religion is seen as the first *maqsad* in protecting the interest of a human being in this life and the hereafter - in protection against punishment. Imam Ghazali divides the five preservations as religion for the hereafter and this life, while intellect, progeny and wealth, for this world only. The protection of religion would include the *ibadāt*, the acts of worship, such as *ṣalāt, sawm, zakat* and *ḥajj*, aspects of imam (belief) and *iḥsan* (the doing of good). The punishments prescribed in the texts are in one way or another intended to protect religion.

The protection of life is identified as the second most important maqsad of the five. It is derived from the Quran in "… take not the life which Allah has made sacred …"[27] and "For what sin was she slain"[28] and " … if anyone slays a human being – unless it be in punishment for murder or for spreading corruption on earth – it shall be as though he had slain all mankind …".[29] Imam al-Shatibi argues for the protection of life in three ways: "… 1) establishing its foundation through legitimacy of procreation, 2) ensuring its survival its after coming into existence by providing food and drink … and 3) providing clothing and shelter …[30] Moreover, the protection of life in the Shari'ah is ensured by a prescribed punishment of retaliation (*qisas*) in case of murder: "… there is life for you in retaliation, O men of understanding…"[31]The law of retaliation distinguishes between two kinds of murder: intentional and unintentional. Moreover, the law of retaliation also prescribes punishment for physical injuries. The maqsad of protection and preservation of life is arrived at by inductive methodology from the texts of the Qur'an and the Sunnah that assert the sacredness of life.[32] The protection of the intellect is one of theDarūrīyāt, for without it how would a person differentiate between right and wrong, good and bad, what are religious obligations and what are not. Here, Muhammad Abdullah Draz argues that: "… the preservation of the intellect constitutes the foundation of al-maqāsid as the intellect determines the obligatory nature of the religious duty".[33] Furthermore, one would need the intellect to learn and practise skills to work for a living: to preserve and enhance life and dignity in earning one's own livelihood. Moreover, in preserving the intellect 'intoxicants and gambling' are seen as evil[34] just as the believer is exhorted not to approach prayers with "…a mind befogged …"[35]

Protecting progeny means promoting the institution of marriage and the 'ties of kinship' exhorted in the Qur'an and expounded in the Sunnah for the preservation of the family. It is the family that is the foundation and cornerstone of society in educating, nurturing and protecting progeny, especially those who are weak and vulnerable. Specific guidelines are laid down as to whom to marry and the roles, rights and responsibilities of

---

[27] (Q, 6:151)
[28] (Q. 81:9)
[29] (Q. 5:32)
[30] Raysuni, p. 141
[31] (Q. 2:179)
[32] Rifa'i, p. 173
[33] Rifa'i, p. 173
[34] (Q, 5:90-91)
[35] (Q. 4:43)

the spouses in preserving the integrity of the family. Hence, the punishment for adultery is very severe. But it could be argued that this severe punishment is for the purpose of deterrence, because in order to punish an adulterer four witnesses who have witnessed the actual act, are required. This is almost impossible; hence it can be argued that the punishment is mentioned to emphasis the serious nature of adultery in that it damages not only family life but also in case of pregnancy for chances of determining who the father is.[36] The preservation of wealth is encouraged by earning a livelihood, providing a home and sustenance, and the accumulation of wealth for the future. However, in order to regulate wealth, the giving of alms is made compulsory from those that can afford it to those less fortunate.[37] Further encouraged and promoted is the giving of charity to those in need. Modern socio-economic terminologies such as 'welfare benefits', 'social assistance', 'societal wellbeing and benefits', 'economic development/growth' amongst others are also used here in discussions of the giving of alms and encouragement of voluntary charity. However, in the earning and accumulation of wealth, there are regulations and prohibitions to protect the rights and wealth of others. Within the *Shari'ah* laws are laid down to govern trade and usury is prohibited. Punishments are derived from the Qur'an when these laws are broken. Perhaps it is in the preservation of wealth that can be most contentious in our times, with the development of the banking system and financial regulations not just for the individual but also for communities, societies and countries. Here, in particular, the financial system is in need of development into one that is in compliance with the *maqāsid* of the *Shari'ah*. An agreement can be made with Rifa'i when he says that: "Unlike the classical period, today a strong economy is vital for the welfare and development of any nation … preservation of wealth must get a broader implication with a full consideration of the huge amount of changes that have been [taking] place in the sphere of modern economy".[38] With respect to the above-mentioned five preservations, Imam Ghazali says:"Preventing the loss of these five fundamentals (*usul*) and protecting them can never be neglected in any religious community (*millah*) or legal system (*Shari'ah*) that is meant for the good and well-being (*salah*) of human beings… and this would be consideration of a *maṣlaḥa* that I know by necessity was intended by the *Shari'ah*, not on the basis of a single proof or one particular rule, but on multiple proofs that are beyond enumeration".[39]

The Needs (*Hajiyat)* Dimension of *Maqāsid* al-S*hari'ah*

Imam al-Shatibi classified the *hajiyat* as "… necessary means to avoid discomfort and undue hardship. If these aims are not fulfilled, the morally accountable Muslim will face some hardship, though not to a degree that would threaten the interests of the Muslim community as a whole".[40] The *hajiyat* are complementary to theDarūrīyāt benefits. The *hajiyat* benefits are to bring 'ease' and alleviate 'hardship', even though the individual or society would not collapse without them. For example, the Qur'an already prescribes concessions (*rukhsa)* for travellers and the sick in fasting and prayers and the pilgrimage (*hajj*) is only for those who have the means, to bring ease. Permission is given for divorce in certain situations, which would also be in the interests of preserving the

[36] Ibn Ashur, M.A.T., (2006), Treatise on Maqāsid al-Shari'ah, Trans. M. T. El-Mesawi, King's Lynn, UK: The International Institute of Islamic Thought. p. 98

[37] (Q. 59:7)

[38] Rifa'i, p. 177

[39] Ibn Ashur. p. 118

[40] Al-Qahtani, M.B. A., (2015), Understanding Maqāsid al-Shari'ah, A contemporary Perspective, Malta: The International Institute of Islamic Thought, p.20

family. In alleviating 'hardship' the *hajiyat* benefit would avert the development of aversion to following the acts of worship and other religious obligations in times of difficulty, when they could be too burdensome. Seeking shelter, food, clothing and transportation are all seen as alleviating 'hardship' and bringing about 'ease'. Moreover, the scholars assert that the *hajiyat* are identifiable as supporting the fulfilment of theDarūrīyāt. Here Ibn Ashur points out that: "The importance given by the *Shari'ah* to the *[hajiyat]* almost equals its concern about the *[daruriyat]*. That is why it has prescribed some categorical penalties for violating some of its kinds, such as the *hadd* punishment for slander".[41]

The Complementary (*al-Tahsiniyyat*) Dimension of *Maqāsid al-Shari'ah* in Contemporary Times

All the *uṣūlī* scholars agree that the primary purpose of the *Shari'ah* is to benefit to the human kind and to prevent harm. Traditional scholars from Imam Ghazali to Imam al-Shaṭibī, identify the following five preservations and so in this order of priority: religion, life, intellect, progeny and wealth. This is known by some as the *ḍarūriyyāt* dimension of the *maqāsid*. It is clear that failing to protect one would have a devastating effect on others. However, although the order of priorities was discussed by these scholars I would argue that in contemporary times all preservations are all inter-connected, inter-dependent and inter-related. Faith is dependent upon life, reasoned through the intellect, continued through the progeny and supported by wealth. Moreover, the preservation of one of the five implies creating opportunities for the enrichment of the other four preservations.[42]

Conclusion

It is without doubt that the *maqāsid* of the Shari'ah are rooted in the texts of the Qur'an and the Sunnah, but they also identify the general philosophy and objectives beyond the specific texts. In comparison, the legal sources mentioned above focuses unfortunately much more on the text and therefore limiting flexibility by a literal reading. Consequently, Kamali asserts that "As such *maqāsid* integrate a degree of versatility and comprehension into the reading of the Shari'ah, that is, in many ways, unique and rises above the vicissitudes of time and circumstance. At a time when some of the important doctrines of *usūl al-fiqh* such as general consensus (*ijma*), analogical reasoning (*qiyas*) and even *ijtihād*, seem to be burdened with difficult conditions, conditions that might stand in a measure of disharmony with the prevailing socio-political climate of the present-day Muslim countries, *maqāsid* have become the focus of attention as [they] tend to provide a ready and convenient access to the Shari'ah" (2008, p. 24). In our era and with new questions, situations and circumstances, perhaps it is the *maqāsid* of the Shari'ah that will help not only in better understanding the Shari'ah, but also in extrapolating new rulings for new questions and situations in order to make Islam relevant for Muslims today.

I would argue that the *maqāsid* model offers distinctive ideas of human and societal welfare. Furthermore, the *maqāsid* approach would provide a stronger link to a better understanding of Allah's (swt) laws, enhancing human virtues in following the *Shari'ah*. Additionally, the *maqāsid* framework should be analysed in the context of contemporary human rights, which are intrinsic in the doctrine of *maqāsid*. I would also argue that the *maqāsid* are essentially dynamic in comparison to other theories and open

---

[41] Ibn Ashur, p. 124

[42] Ibn Ashur, p. 125

to growth in line with the changing world, promoting better governance, environmental responsibilities, animal welfare, ethics, education and psychology and so on, which arguably Muslim majority countries are behind in developing and implementing. Moreover, it may be pertinent to keep in mind that many Muslim majority countries are rightfully criticised for not keeping abreast with human, social and environmental welfare.

Bibliography

Al- Qur'*ā*n
Auda, J. (2008), MAQĀSID AL-SHARĪʿAH – An Introductory Guide, IIIT
Kamali, M.H., (2008), Maqāsid Al-Shari'ah Made Simple, The International Institute of Islamic Thought
Al 'Alwani, T. J., (1990), Usul Al Fiqh Al Islami: Source Methodology in Islamic Jurisprudence, trans. Y. T. DeLorenzo & A. S. Al-shaikh-Ali: Maryland, U.S.A: The International Institute of Islamic thought,
Rifa'I, S.L.M (2004), The Legal Doctrines of Maqāsid AL-Shari'ah with particular reference to the works of Imam al-Shatibi: Historical and Practical Dimension, Thesis Submitted to the School of Oriental and African Studies, University of London
Izzi Dien, M., (2004), Islamic Law – From Historical Foundations to Contemporary Practice, Trowbridge, England: University of Notre Dame Press
Al-Shatibi, I. Ibn M.A.I., (2011), The Reconciliation of the Fundamentals of Islamic Law, Vol.1, Trans. I.A.K. Nyazee, Lebanon: Garnet Publishing Limited
Nyazee, I.A.K., (2003), Islamic Jurisprudence, Malaysia: The International Institute of Islamic Thought
Ibn Ashur, M.A.T., (2006), Treatise on Maqāsid al-Shari'ah, Trans. M. T. El-Mesawi, King's Lynn, UK: The International Institute of Islamic Thought
Al-Qahtani, M.B. A., (2015), Understanding Maqāsid al-Shari'ah, A contemporary Perspective, Malta: The International Institute of Islamic Though